BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of ROBERT E. & CHRISTINE M. STENGLE For a Declaratory Order Clarifying and Correcting the Boundary Interpretations of the Land Use Commission under Boundary Interpretation No. 98-36 Dated October 29, 1998, and Boundary Interpretation No. 98-50 Dated January 12, 1999	DOCKET NO. DR99-21 DECLARATORY ORDER

This is to certify that this is a true and correct copy of the document on file in the office of the State Land Use Commission, Honolulu, Hawaii.

MAR 2 4 1999 by
Date Executive Officer

LAND USE COMMISSION
STATE OF HAWAII
1999 MAR 24 A 11:02

DECLARATORY ORDER

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DECLARATORY ORDER

PETITIONERS' INTEREST

Robert E. and Christine M. Stengle ("Petitioners") filed a Petition for Declaratory Order, pursuant to sections 15-15-98 and 15-15-22(f), Hawai'i Administrative Rules ("HAR"). Petitioners are the owners in fee simple of approximately 9.44 acres of land located at the 20 mile marker on the Hawai'i Belt Road along the Hamakua Coast in the village of Ninole, North Hilo, Hawai'i, and identified as TMK 3-2-03: 23 and 41 ("Property").

Petitioner filed the instant Petition for Declaratory Order "for a declaratory order clarifying and correcting the boundary interpretations dated October 29, 1998 in Boundary Interpretation No. 98-36 and dated January 12, 1999 in Boundary Interpretation No. 98-50."

FINDINGS OF FACT

PROCEDURAL MATTERS

1. On January 27, 1999, Petitioners filed their Petition for Declaratory Order and Petitioners' Memorandum in Support of Petition for Declaratory Order.

2. On February 24, 1999, the Office of Planning ("OP") filed its Testimony of the Office of Planning. OP commented that based on the information provided, it had no objections to Petitioners' request; however, OP noted that its position should not be interpreted to mean that "Top of Pali" was the public policy relative to the Agricultural and Conservation District boundary in all cases.

3. By letter dated February 22, 1999, received on February 24, 1999, the Department of Land and Natural Resources stated that it had no comments regarding the Petition for Declaratory Order.

POSITION OF PETITIONERS

4. Petitioners contend that the Land Use Commission ("Commission") should interpret the boundary between the Agricultural District and Conservation District at the ridge (pali) top, as determined by Petitioners' topographical survey map of the Property. Petitioners argue that this would be in compliance and consistent with i) the 1969 Five-Year Boundary Review report entitled "State of Hawaii Land Use Districts and Regulations Review"; ii) the overall purpose of Chapter 205, Hawai'i Revised Statutes ("HRS"); and iii) the basis and intent

of the Commission when the district boundaries were established for the Property in 1969.

5. Petitioners state that using the ridge top as the basis for the location of the Agricultural and Conservation District boundary would place approximately 46,699 square feet currently designated within the Conservation District and containing a macadamia nut orchard into the Agricultural District and place approximately 22,888 square feet currently designated within the Agricultural District and containing stream beds and a waterfall into the Conservation District.

6. Petitioners state that a declaratory order clarifying the Agricultural and Conservation District boundary as being the ridge top is necessary to enable Petitioners to avoid uncertainty in their property rights.

DESCRIPTION AND BACKGROUND OF THE PROPERTY

7. The Property in question is currently identified as TMK 3-2-03: 23 and 41. Parcel 23 is approximately 1.36 acres and Parcel 41 is approximately 8.077 acres.

8. Parcel 23 is located within the Agricultural District and Parcel 41 is located within the Agricultural and Conservation Districts, as represented by the State Land Use District Boundaries Map, H-59 (Papaaloa). The Agricultural and Conservation District boundaries relative to the Property were established in the 1969 Five-Year Boundary Review. The Commission adopted the State Land Use District Boundaries Maps following the Review as the then official maps of the Commission, with an effective date of August 4, 1969.

9. The Property is located at the 20 mile marker on the Hawai'i Belt Road along the Hamakua Coast in the village of Ninole, North Hilo, Hawai'i.

10. The Property was historically cultivated in sugarcane. There is no evidence in the record indicating the specific areas within the Property that were cultivated in sugarcane. The Property was converted to a macadamia nut orchard in 1982.

11. By letter dated September 2, 1998, Petitioners requested a boundary interpretation to determine the location of the Agricultural and Conservation District boundary on the Property with the Commission. Boundary Interpretation No. 98-36 dated October 29, 1998, was subsequently prepared on Tax Map 3-2-03. Parcel 23 was determined to be located entirely within the Agricultural District and Parcel 41 was determined to be located within the Agricultural and Conservation Districts, with the boundary separating the two districts generally following the top of the ridge or pali.

12. Staff based its determination of the parcels' land use designation on an enlargement of the Commission's State Land Use District Boundaries Map, H-59 (Papaaloa), which represented the Agricultural and Conservation District boundary as following the 200-foot contour line, and upon review of the "State of Hawaii Land Use Districts and Regulations Review" prepared by Eckbo, Dean, Austin & Williams to document the recommendations and actions in the 1969 Five-Year Boundary Review. The report reflected that along the Hamakua Coast of the island of Hawai'i,

the Conservation District boundary was to follow the top of the ridge or pali. Areas in agricultural use at that time were excluded.

13. Staff informed Petitioners that for a more precise location of the Agricultural and Conservation District boundary, a topographical survey map with contour lines represented and the top of the pali identified in metes and bounds would be required.

14. By letter dated December 2, 1998, Petitioners requested another boundary interpretation for the Property. Boundary Interpretation No. 98-50 dated January 12, 1999, was subsequently prepared on Petitioners' topographical survey map, which delineated the top of the pali in metes and bounds and represented an approximate location of the 200-foot contour line. Staff determined that Petitioners' representation of the top of the pali did not conform with that shown on the Commission's State Land Use District Boundaries Map, H-59 (Papaaloa).

15. In order to be consistent with the location of the Agricultural and Conservation District boundary represented on the State Land Use District Boundaries Map, H-59, Staff delineated a boundary approximately following the 200-foot contour line as depicted on Petitioners' topographical survey map.

16. Petitioners originally purchased the Property in 1982 with the intention of building a house on the Property and retiring there. Petitioners now plan to sell the Property and retire on O'ahu.

17. Any conclusion of law herein improperly designated as a finding of fact shall be deemed or construed as a conclusion of law; any finding of fact herein improperly designated as a conclusion of law shall be deemed or construed as a finding of fact.

CONCLUSIONS OF LAW

JURISDICTION

1. Jurisdiction of the Commission to consider the request of Petitioners is authorized under §§15-15-98 and 15-15-22(f), HAR.

REMEDY

1. Petitioners are requesting the Commission to issue a declaratory order clarifying and correcting the boundary interpretations dated October 29, 1998, in Boundary Interpretation No. 98-36 and dated January 12, 1999, in Boundary Interpretation No. 98-50.

APPLICABLE LEGAL AUTHORITIES

1. The "State of Hawaii Land Use Districts and Regulations Review" documented the Commission's process to establish the Conservation District boundaries during the 1969 Five-Year Boundary Review. The report recognized four major conditions and provided recommendations based on these conditions for the Conservation District boundaries. Of relevance here is Condition No. 3, which states:

> In cases where the shoreline is bounded by steep cliffs or a pali, the top of the ridge was used (p. 86).

2. The report further documented the Commission's actions with respect to the establishment of the Conservation District boundaries at the shoreline of the island of Hawai'i by stating:

> The steep pali coast of east Kohala is presently within the Conservation District. This district should be extended to include the sandy beach at Waipio Valley and then to include the pali lands of the Hamakua Coast, using the ridge top as a boundary line (p. 36).

3. Petitioners' topographical survey map of the Property prepared by a registered professional land surveyor delineates the top of the ridge or pali in metes and bounds.

4. Petitioners' request to place the approximately 22,888 square feet currently in the Agricultural District and containing stream beds and a waterfall into the Conservation District is not supported by the recommendations or actions documented in the report and is a matter more appropriately addressed through the district boundary amendment process, pursuant to Chapter 205, HRS.

A. DECLARATORY ORDER

FOR GOOD CAUSE APPEARING, the Commission hereby rules that the Boundary Interpretation No. 98-36 dated October 29, 1998, and Boundary Interpretation No. 98-50 dated January 12, 1999, are clarified and corrected to reflect that the Property mauka of the top of the ridge or pali, approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, is designated within the State Land Use Agricultural District.

Accordingly, this Commission determines that State Land Use District Boundaries Map, H-59 (Papaaloa), be amended to reflect that the Property mauka of the top of the ridge or pali is designated within the State Land Use Agricultural District.

Done at Honolulu, Hawai'i, this 24th day of March 1999, per motions on February 25, 1999 and March 18, 1999.

LAND USE COMMISSION
STATE OF HAWAI'I

By (absent)
MERLE A. K. KELAI
Chairperson and Commissioner

By
LAWRENCE N.C. ~~ING~~
Vice Chairperson and Commissioner

By (absent)
P. ROY CATALANI
Commissioner

By
RUPERT K. CHUN
Commissioner

By
PRAVIN DESAI
Commissioner

By (absent)
ISAAC FIESTA, JR.
Commissioner

By
M. CASEY JARMAN
Commissioner

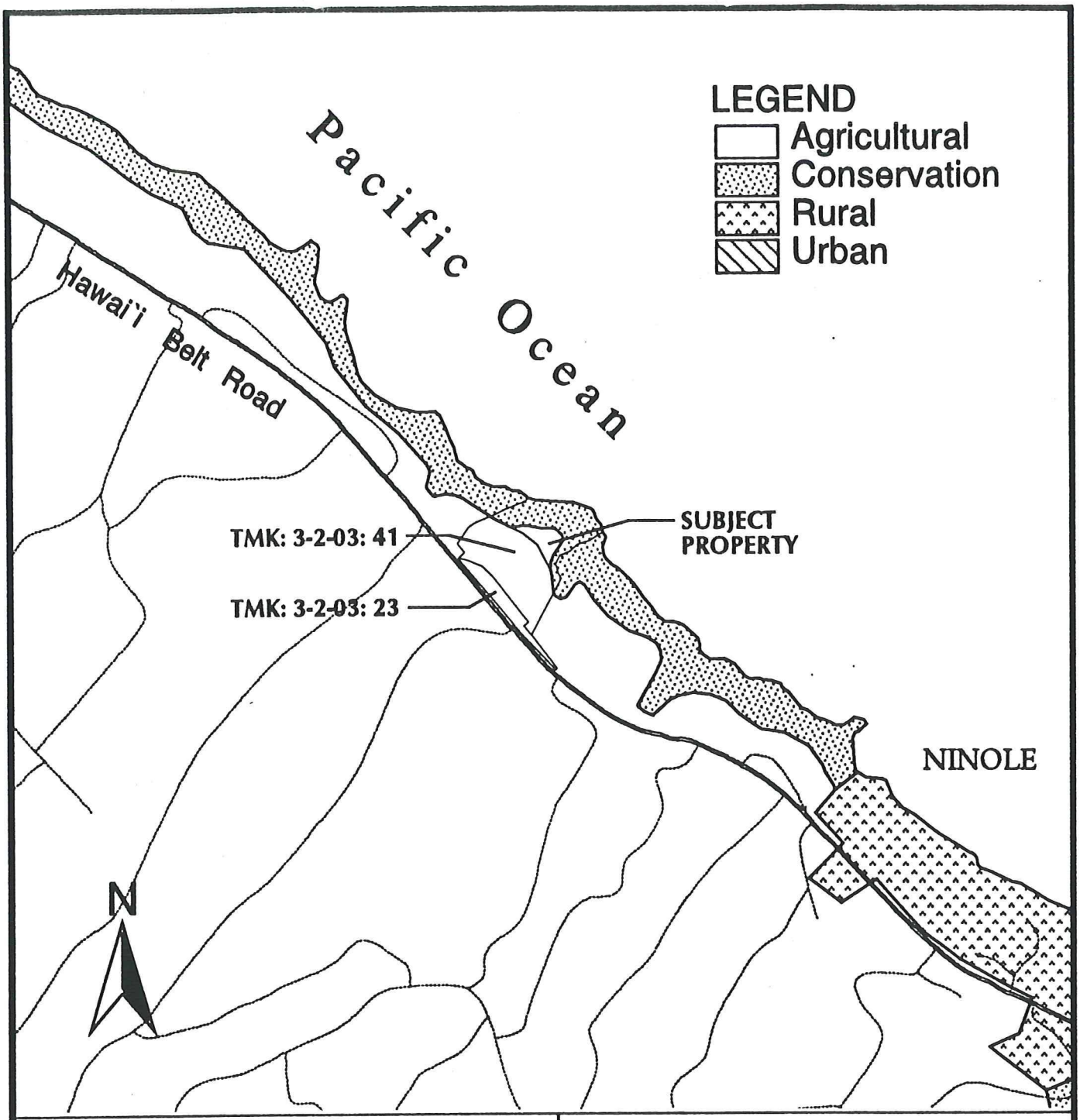
By
HERBERT S.K. KAOPUA, SR.
Commissioner

By
PETER YUKIMURA
Commissioner

Filed and effective on
March 24, 1999

Certified by:

Executive Officer

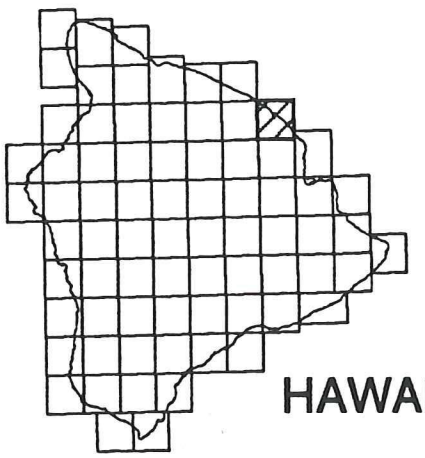


DR99-21 / ROBERT E. AND CHRISTINE M. STENGLE

LOCATION MAP

TMK: 3-2-03: 23 & 41
NINOLE, NORTH HILO, HAWAI`I

EXHIBIT " A "



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In the Matter of the Petition of	)	DOCKET NO. DR99-21
	)	
ROBERT E. & CHRISTINE M. STENGLE	)	CERTIFICATE OF SERVICE
	)	
For a Declaratory Order Clarifying and Correcting the Boundary Interpretations of the Land Use Commission under Boundary Interpretation No. 98-36 Dated October 29, 1998, and Boundary Interpretation No. 98-50 Dated January 12, 1999	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Declaratory Order was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by certified mail:

DEL. DAVID W. BLANE, Director
Office of Planning
P. O. Box 2359
Honolulu, Hawaii 96804-2359

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Planning Department, County of Hawaii
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CERT. TIMOTHY E. JOHNS, Chairperson
ATTENTION: Dean Uchida, Land Division
Board of Land and Natural Resources
1151 Punchbowl Street, Room 130
Honolulu, Hawaii 96813

CERT. S. KAOLIN SACHET, Deputy Finance Director
County of Hawaii
Real Property Tax Division, Mapping Section
865 Pi'ilani Street
Hilo, Hawaii 96720

ROBERT E. STENGLE, Petitioner
CERT. 5436 Kirkwood Place
Honolulu, Hawaii 96821

DATED: Honolulu, Hawaii, this 24th day of March 1999.

ESTHER UEDA
Executive Officer